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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer information

Name	The B.V.D. Licensing Corporation		
Entity	Corporation	Citizenship	Delaware
Address	ONE FRUIT OF THE LOOM DRIVE BOWLING GREEN, KY 42013 UNITED STATES		

Correspondence information	CARRIE A. SHUFFLEBARGER THOMPSON HINE LLP 312 WALNUT STREET, SUITE 2000 CINCINNATI, OH 45202 UNITED STATES Primary email: Carrie.Shufflebarger@thompsonhine.com Secondary email(s): docket@thompsonhine.com, lou.ebling@thompsonhine.com 5133526678

Applicant information

Application no.	97154128	Publication date	02/21/2023
Opposition filing date	02/21/2023	Opposition period ends	03/23/2023
Applicant	Xiamen Yipu Trading Co., Ltd. ROOM 1802, NO. 106, YUANBO SANLI, JIMEI DISTRICT, XIAMEN, FUJIAN, 361000 CHINA		

Goods/services affected by opposition

Class 025. First Use: Oct 8, 2021 First Use In Commerce: Oct 8, 2021
All goods and services in the class are opposed, namely: Shoes; Ankle boots; Boots for sport; Football shoes; Gymnastic shoes; Insoles for footwear; Rain boots; Running shoes; Sports shoes; Studs for football boots; Valenki

Grounds for opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
No use of mark in commerce before application, amendment to allege use, or statement of use was due	Trademark Act Section 1(a) and (c)
Dilution by blurring	Trademark Act Sections 2 and 43(c)

Marks cited by opposer as basis for opposition

U.S. registration no.	0049931	Application date	07/15/1905
Register	Principal		
Registration date	02/27/1906	Foreign priority date	NONE
Word mark	B.V.D.		
Design mark			
Description of mark	NONE		
Goods/services	Class 039. First use: First Use: Sep 1, 1876 First Use In Commerce: Sep 1, 1876 UNDERSHIRTS AND UNDER-DRAWERS		

U.S. registration no.	0367184	Application date	11/30/1938
Register	Principal		
Registration date	05/09/1939	Foreign priority date	NONE
Word mark	B.V.D.		
Design mark			
Description of mark	NONE		
Goods/services	Class 039. First use: First Use: 1876 First Use In Commerce: 1876 [CLOTHING FOR MEN AS FOLLOWS--] UNDERWEAR [OF WOVEN AND TEXTILE FABRICS, namely,], SHIRTS, [DRAWERS, UNION SUITS], SHORTS [AND SKI UNDERWEAR, PAJAMAS; ATHLETIC OUTER CLOTHING NAMELY, ATHLETIC SHIRTS AND RUNNING PANTS, BRIEFS, COMBINED GIRDLE AND KNIT SHORTS, BATHING SUITS, BATHING TRUNKS, SWEATERS; NEGLIGEE SHIRTS, SPORT SHIRTS, NIGHT SHIRTS, ROBES FOR PERSONAL WEAR, BEACHWEAR, TO WIT, WOVEN AND KNIT SHIRTS, HANDKERCHIEFS; CLOTHING FOR WOMEN AS FOLLOWS-- BATHING SUITS, BEACHWEAR, TO WIT, SLACKS, SHIRTS AND SHORTS, CAPES, SCARFS FOR PERSONAL WEAR, BANDANAS; SPORT SHIRTS, SWEATERS, HOUSECOATS, PAJAMAS, ROBES FOR PERSONAL WEAR, KNIT SKI SHIRTS] AND [SHORTS, UNION SUITS, HANDKERCHIEFS; CLOTHING FOR CHILDREN, UNDERWEAR, BATHING SUITS AND BATHING TRUNKS, AND CHILDREN'S WAIST SUITS]		

U.S. registration no.	0764348	Application date	04/30/1963
Register	Principal		
Registration date	02/04/1964	Foreign priority date	NONE
Word mark	B.V.D.		
Design mark			
Description of mark	NONE		
Goods/services	Class 039. First use: First Use: Sep 1, 1876 First Use In Commerce: Sep 1, 1876 Men's and Boys' [Dress,] [Sport and Work Shirts, Sweat Shirts,] T-Shirts, [Jackets, Work Jackets, Slacks, Pants, Walking Shorts, Clam Diggers, Overalls, Coveralls, Work Pants, Dungarees, Neckties,] [Socks,] [Slipper Socks,] [		

	Lounging Robes, Pajamas,] [Underwear,] [and Beachwear Consisting of Swim Trunks, Cabana Sets and Beach Robes; Women's Sport Shirts;] [Girls' and Infants' Socks;] [Children's Playsuits, Shorts, Slacks, Pants, Shirts, Dungarees, and Jackets]

U.S. registration no.	2853880	Application date	07/02/2003
Register	Principal		
Registration date	06/15/2004	Foreign priority date	NONE
Word mark	BVD		
Design mark			
Description of mark	NONE		
Goods/services	Class 025. First use: First Use: Mar 28, 2003 First Use In Commerce: Mar 28, 2003 Men's and Boys' T-Shirts		

U.S. registration no.	2899674	Application date	06/25/2003
Register	Principal		
Registration date	11/02/2004	Foreign priority date	NONE
Word mark	BVD		
Design mark			
Description of mark	NONE		
Goods/services	Class 025. First use: First Use: Mar 28, 2003 First Use In Commerce: Mar 28, 2003 Men's and boys' underwear		

U.S. registration	3475888	Application date	12/14/2007

no.			
Register	Principal		
Registration date	07/29/2008	Foreign priority date	NONE
Word mark	THE LEGENDARY QUALITY OF BVD		
Design mark			
Description of mark	NONE		
Goods/services	Class 025. First use: First Use: Feb 13, 2004 First Use In Commerce: Feb 13, 2004 T-shirts; Briefs; Underwear		

Attachments	78269632#TMSN.png(bytes) 77352812#TMSN.png(bytes) 1 Notice of Opposition BVDFE.pdf(359421 bytes)

Signature	/cas/
Name	Carrie A. Shufflebarger
Date	02/21/2023

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of

Application No.	:	97154128
Applicant	:	Xiamen Yipu Trading Co., Ltd.
Mark	:	BVDFE
Filing Date	:	December 2, 2021
Publication Date	:	February 21, 2023
Opposed Class:	:	25

The B.V.D. Licensing Corporation	:	
	:	
Opposer	:	
	:	Opposition No. _____
v.	:	
	:	
Xiamen Yipu Trading Co., Ltd.	:	
	:	
Applicant	:	
	:	

NOTICE OF OPPOSITION

The B.V.D. Licensing Corporation ("Opposer"), a Delaware corporation having a mailing address at One Fruit of the Loom Drive, Bowling Green, Kentucky 42013, believes it will be damaged by registration in International Class 25 of the mark shown in Application Serial No. 97154128 by Xiamen Yipu Trading Co., Ltd., a purported individual domiciled in China ("Applicant"), and hereby opposes registration of the same.

As grounds of opposition, it is alleged that:

1. Opposer is the owner of the mark BVD, including the following valid and subsisting U.S. registrations, all of which are incontestable under 15 U.S.C. §1065 (the "BVD Marks"):

Mark	Registration No.:	Goods/Services
B.V.D.	49,931	undershirts and under-drawers
B.V.D.	367,184	underwear; shirts; shorts
B.V.D.	764,348	men's and boys' T-shirts
	2,853,880	men's and boys' T-shirts
	2,899,674	men's and boys' underwear
THE LEGENDARY QUALITY OF BVD	3,475,888	T-shirts; Briefs; Underwear

2. Opposer and its predecessors in interest have used the trademark BVD since at least as early as 1876 in connection with the manufacture and sale of clothing.

3. Opposer and its predecessors in interest have expended substantial amounts of money, time, and effort over many years advertising, promoting, and popularizing the BVD Marks, and in preserving the good will associated therewith.

4. By virtue of these efforts and the excellence of its goods, Opposer has gained a valuable reputation for its BVD Marks, which have become distinctive of and associated in the minds of the trade and purchasing public with Opposer as a well-known provider of its goods.

5. On December 2, 2021, Applicant filed U.S. Application Serial No. 97154128 under Section 1(a) of the Lanham Act (the "Application"), seeking to register the mark BVDFE ("Applicant's Mark") for use with the following goods in International Class 25, alleging October 8, 2021 as the date of first use:

> Shoes; Ankle boots; Boots for sport; Football shoes; Gymnastic shoes; Insoles for footwear; Rain boots; Running shoes; Sports shoes; Studs for football boots; Valenki

6. Applicant's initial specimen, displaying a single pair of shoes, was refused by the Examining Attorney as a "digitally created or altered image or a markup of a depiction of the mark on the goods or their packaging."

7. Applicant then submitted a substitute specimen consisting of a "men's Soccer Boot" with November 22, 2022 listed as its "date first available," and a separate pair of "soccer shoes" from the website https://www.goshopl.com, the page for which lists November 15, 2022 as "release date" for that shoe.

8. Applicant's Mark was published for opposition in the Official Gazette of the United States Patent and Trademark Office on February 21, 2023.

COUNT I
PRIORITY AND LIKELIHOOD OF CONFUSION

9. Opposer hereby incorporates by reference the allegations of Paragraphs 1-8 as if fully set forth herein.

10. Priority is not an issue: Opposer used its BVD marks in U.S. commerce with clothing well prior to any priority date Applicant may claim, and Opposer has not abandoned its BVD Marks.

11. Applicant's Mark incorporates the entirety of Opposer's BVD mark and is similar in appearance, sound, and commercial impression to Opposer's BVD Marks.

12. The opposed goods are closely related to the goods sold under Opposer's BVD Marks.

13. Applicant's application to register Applicant's Mark and any use Applicant has made of said mark on the goods identified therein are without Opposer's consent.

14. Applicant's Mark so resembles Opposer's BVD Marks as to be likely, when applied to the goods of Applicant, to cause confusion, to cause mistake, or to deceive within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d). The aforesaid likelihood of confusion will damage Opposer within the meaning of 15 U.S.C. § 1063.

COUNT II
DILUTION BY BLURRING

15. Opposer hereby incorporates by reference the allegations of Paragraphs 1-14 as if fully set forth herein.

16. Since long prior to Applicant's filing date or alleged date of first use, Opposer's BVD Marks had become distinctive and famous within the meaning of the Lanham Act, 15 U.S.C. §1125(c), and BVD has been famous in the United States since the late 19th century.

17. Applicant's Mark so resembles Opposer's famous BVD Marks as to be likely, when applied to the goods of Applicant, to cause dilution of the distinctive quality of Opposer's BVD Marks within the meaning of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c).

COUNT III
LACK OF BONA FIDE USE IN COMMERCE

18. Opposer hereby incorporates by reference the allegations of Paragraphs 1-17 as if fully set forth herein.

19. Applicant's Application alleges use in commerce in connection with several discrete apparel/footwear items, but the submitted specimens show only two such items, both "soccer boots."

20. On information and belief, Applicant had not used Applicant's Mark on all of the items listed in the Application when the Application was filed.

21. On information and belief, Applicant had not used Applicant's Mark on any of the items listed in the Application when the Application was filed.

22. Applicant's Application is void *ab initio* because there was no bona fide use of Applicant's Mark in commerce on all of the goods listed therein prior to the filing date of its use-based application for its registration under Trademark Act § 1(a), 15 U.S.C. § 1052(a), and thus registration should be denied.

23. Opposer would be damaged by registration of Applicant's Mark because registration would grant Applicant statutory rights under the Trademark Act of 1946, and would tend to restrict, interfere with, and damage Opposer in the unhampered conduct of its business and protection of its legitimate interests.

WHEREFORE, Opposer prays that Applicant's U.S. Trademark Application Serial No. 97154128 to register the mark BVDFE be rejected, and that registration of said mark be refused and denied.

The filing fee of $600 is being submitted herewith by a credit card of Opposer's counsel noted below.

Please direct all correspondence to Carrie A. Shufflebarger, Esq., at Thompson Hine, LLC, 312 Walnut Street, Twentieth Floor, Cincinnati, Ohio 45202, and all calls to the same at (513) 352-6678.

Respectfully submitted,

/s/ Carrie A. Shufflebarger

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Counsel for Opposer

Date: February 21, 2023

CERTIFICATE OF FILING

I certify that this NOTICE OF OPPOSITION is being submitted electronically to the Trademark Trial and Appeal Board at the United States Patent and Trademark Office on this 21st day of February, 2023

/s/ Carrie A. Shufflebarger